

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

RAMIREZ FARMS,)	
)	
Employer,)	Case No. 96-PM-5-SAL
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	22 ALRB No. 12
AFL-CIO,)	(October 11, 1996)
)	
Labor Organization,)	
)	
and)	
)	
RAQUEL ALARID, CESAR SANCHEZ,)	
)	
<u>UFW Organizers.</u>)	

Pursuant to the provisions of Title 8, California Code of Regulations, section 20900,¹ Ramirez Farms (Employer) has filed a motion to deny access, seeking to bar the United Farm Workers of America, AFL-CIO (UFW) from taking access to Ramirez Farms' fields for one year, or for a sufficient period during peak season to deter such tactics in the future, and to bar UFW organizers Raquel Alarid and Cesar Sanchez from taking access in the Salinas region of the Agricultural Labor Relations Board (ALRB or Board) for one year. The UFW filed a response opposing the motion.

As we explained in Navarro Farms (1996) 22 ALRB No. 10, the Board promulgated the access regulation to permit union organizers to take pre-election access to the worksite in order

¹All section references are to this regulation, unless otherwise specified.

to communicate with employees about unionization. Such access is permitted only under strict procedural and time and manner limitations. In addition, the regulation authorizes the Board to bar labor organizations as well as individual organizers who violate the regulation from taking access for a specified period of time after due notice and hearing. (§ 20900(e)(5)(A).)

In Dutra Farms (1996) 22 ALRB No. 5, the Board held that an evidentiary hearing will be set upon the filing of a motion to deny access which is accompanied by sworn declarations reflecting facts which, if uncontroverted or unexplained, would establish a prima facie violation of the access regulation which warrants the denial of access for some specified period. For the reasons set forth below, the Board finds that Ramirez Farms has met the standard set forth in Dutra Farms.

The Employer alleges in its motion that two UFW organizers came onto the Employer's fields on July 26, 1996 during the noon time access period, but instead of taking access to communicate with employees, came on the property to inspect the premises, to pose as inspectors from the California Occupational Safety and Health Administration (CAL-OSHA), and issue counterfeit CAL-OSHA citations.

The supporting declarations state the following. According to the declaration of foreman Juan Nava, at 12:05 p.m. on July 26, UFW organizer Raquel Alarid approached the area where his crew was taking their lunch break. Instead of talking to the crew, Alarid instead went over and began inspecting the portable

toilets that were in the back of the truck in which Nava was sitting. Nava then told Alarid to stop inspecting the toilets because she had no authority to do so and told her that her job was to talk to the crew. Alarid then went over and began talking to the crew.

According to the declaration of General Manager John Ramirez, he was informed by a supervisor that some UFW organizers were inspecting portable toilets. He then went to the site and confronted Alarid at 12:25 p.m., as the crew were returning to work (Alarid was wearing a badge that identified her as a UPW organizer). He told Alarid that she had no authority to inspect toilets, to which she replied that she was there to help him and the people. She then tried to hand Ramirez a sheet of paper which Ramirez characterized as a list of "violations." Ramirez refused to accept the sheet of paper, telling Alarid that she did not represent CAL-OSHA. At that moment, a man with a badge identifying him as UFW organizer Cesar Sanchez approached, saying that they were just trying to correct problems on the ranch, and "help the people and the company stay in compliance." Ramirez then asked the organizers to leave, since the access period had expired, and they complied.

DISCUSSION

Unlike the declarations submitted in Navarro Farms, the declarations in the present case reflect that the UFW organizers wore badges that clearly identified themselves as such. Nor are there declarations reflecting that the organizers represented to

employees that they were from CAL-OSHA or some other governmental health and safety agency. The form which the organizers attempted to present to Ramirez was not submitted with the motion because Ramirez refused to accept it. The only facts regarding the form that are contained in the supporting declarations are that Ramirez was handed a sheet of paper with a list of violations. These limited facts are insufficient to support the allegation in the motion that the form was in fact a counterfeit citation from CAL-OSHA.² Therefore, the declarations fail to support the allegation that the UFW organizers posed as CAL-OSHA agents or attempted to issue counterfeit citations. Consequently, this aspect of the motion shall be dismissed.

However, this matter is similar to Navarro Farms to the extent that the declarations reflect that the UFW organizers entered the property for the primary purpose of inspecting the property, rather than communicating with the employees about unionization. In Navarro, the Board set the matter for hearing based on similar facts, as well as on facts showing that UFW organizers posed as CAL-OSHA agents. However, we view the two elements in Navarro as independently sufficient to establish a prima facie case, such that the inspection of property itself reflects a misuse of access and, thus, an intentional or reckless disregard for the access regulation. Therefore, we shall set for

²The form used by the UFW in the Navarro case is a form used by the public to make complaints to CAL-OSHA and it asks if the complainant has brought the complaints to the attention of the company.

hearing the allegation here that the UFW and its organizers showed an intentional or reckless disregard for the access regulation by utilizing access not for the proper purpose of communicating with employees, but for the purpose of inspecting the premises and complaining about any perceived health and safety violations.

ORDER

The following question shall be set for hearing:

On July 26, at Ramirez Farms' operations near Salinas, California, did UFW organizers Raquel Alarid and Cesar Sanchez show an intentional and/or reckless disregard for the Board's access regulation by taking access not for the proper purpose of communicating with employees, but for the primary purpose of inspecting the premises and complaining about any perceived health and safety violations?

The Employer shall have the burden of proving that the Union and/or its agents engaged in conduct which warrants the granting of the motion to deny access. The Union will have full party status, including the opportunity to call, examine and cross examine witnesses. Thereafter, the Investigative Hearing Examiner will issue a recommended decision to which any party may file exceptions with the Board.

The Executive Secretary of the Board shall issue a formal Notice of Hearing setting forth the date, place, and time of said hearing.

DATED: October 11, 1996

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

Ramirez Farms
(UFW, Raquel Alarid,
Cesar Sanchez)

22 ALRB No. 12
Case No. 96-PM-5-SAL

Background

Ramirez Farms (Employer) filed a motion to deny access, seeking to bar the United Farm Workers of America, AFL-CIO (UFW) from taking access to Ramirez Farms' fields for one year, or for a sufficient period during peak season to deter such tactics in the future, and to bar UFW organizers Raquel Alarid and Cesar Sanchez from taking access in the Salinas region of the Agricultural Labor Relations Board (ALRB or Board) for one year. The UFW filed a response opposing the motion. The Employer alleged in its motion that two UFW organizers came onto the Employer's fields on July 26, 1996 during the noon time access period, but instead of taking access to communicate with employees, came on the property to inspect the premises, to pose as inspectors from the California Occupational Safety and Health Administration (CAL-OSHA), and issue counterfeit CAL-OSHA citations.

Board Decision

The Board found that the motion and supporting declarations were sufficient to establish a prima facie case that the UFW organizers showed an intentional and/or reckless disregard for the Board's access regulation by entering the Employer's property for the primary purpose of inspecting the property, rather than communicating with the employees about unionization. Therefore, the Board set for hearing this portion of the allegations. In contrast, the Board observed that the supporting declarations reflect that the UFW organizers wore badges that clearly identified themselves as such, and fail to reflect that the organizers otherwise represented to employees that they were from CAL-OSHA or some other governmental health and safety agency. Therefore, the allegation that the organizers posed as CAL-OSHA agents was dismissed. Similarly, the Board found that the only facts contained in the declarations regarding counterfeit citations, i.e., that the Employer's general manager was handed a sheet of paper with a list of violations which he refused to accept, were insufficient to support the allegation in the motion that the form was in fact a counterfeit citation from CAL-OSHA. Therefore, this allegation also was dismissed.

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